

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 514

Introduced by Senator Simitian

February 17, 2011

An act to add Sections 11110 and 11111 to the Health and Safety Code, relating to nonprescription drugs.

LEGISLATIVE COUNSEL'S DIGEST

SB 514, as amended, Simitian. Dextromethorphan: sale to minors prohibited.

Existing law prohibits a manufacturer, wholesaler, retailer, or other person from selling, transferring, or otherwise furnishing a specified substance, including ephedrine and pseudoephedrine, to a person under 18 years of age, except as specified. A first violation of this provision is a misdemeanor. Existing law further regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction, *punishable by a fine not exceeding \$250*, for any person, corporation, or retail distributor, in an over-the-counter sale to, without a prescription, to willfully and knowingly supply, deliver, or give possession of a nonprescription drug containing dextromethorphan to a person under 18 years of age. The bill would provide that proof that bona fide evidence of majority and identity was demanded and shown shall be a defense to any criminal prosecution.

The bill would further provide that a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction or subject to any civil penalties, unless the retail clerk is a willful participant in an ongoing criminal conspiracy to violate the

provisions prohibiting the sale of dextromethorphan to minors. By creating new crimes, this bill would impose a state-mandated local program.

The bill would require a person, corporation, or retail distributor that sells a product containing dextromethorphan to use a cash register that is equipped with an age-verification feature that directs the retail clerk to request identification before the product may be purchased, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11110 is added to the Health and Safety
2 Code, to read:
3 11110. (a) It shall be an infraction, *punishable by a fine not*
4 *exceeding two hundred fifty dollars (\$250)*, for any person,
5 corporation, or retail distributor to willfully and knowingly supply,
6 deliver, or give possession of a drug, material, compound, mixture,
7 preparation, or substance containing any quantity of
8 dextromethorphan (the dextrorotatory isomer of
9 3-methoxy-N-methylmorphinan, including its salts, but not
10 including its racemic or levorotatory forms) to a person under 18
11 years of age in an over-the-counter sale without a prescription.
12 (b) It shall be prima facie evidence of a violation of this section
13 if the person, corporation, or retail distributor making the sale does
14 not require and obtain bona fide evidence of majority and identity
15 from the purchaser, unless from the purchaser's outward
16 appearance the person making the sale would reasonably presume
17 the purchaser to be 25 years of age or older.
18 (c) Proof that a person, corporation, or retail distributor, or his
19 or her agent or employee, demanded, was shown, and acted in
20 reasonable reliance upon, bona fide evidence of majority and
21 identity shall be a defense to any criminal prosecution under this
22 section. As used in this section, "bona fide evidence of majority

1 and identity” means a document issued by a federal, state, county,
2 or municipal government, or subdivision or agency thereof,
3 including, but not limited to, a motor vehicle operator’s license,
4 California state identification card, identification card issued to a
5 member of the Armed Forces, or other form of identification that
6 bears the name, date of birth, description, and picture of the person.

7 (d) (1) Notwithstanding any other provision of this section, a
8 retail clerk who fails to require and obtain proof of age from the
9 purchaser shall not be guilty of an infraction pursuant to
10 subdivision (a) or subject to any civil penalties.

11 (2) This subdivision shall not apply to a retail clerk who is a
12 willful participant in an ongoing criminal conspiracy to violate
13 this section.

14 SEC. 2. Section 11111 is added to the Health and Safety Code,
15 to read:

16 11111. A person, corporation, or retail distributor that sells or
17 makes available products containing dextromethorphan, as defined
18 in subdivision (a) of Section 11110, in an over-the-counter sale
19 without a prescription shall, if feasible, use a cash register that is
20 equipped with an age-verification feature to monitor age-restricted
21 items. The cash register shall be programmed to direct the retail
22 clerk making the sale to request bona fide evidence of majority
23 and identity, as described in subdivision (c) of Section 11110,
24 before a product containing dextromethorphan may be purchased.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.